

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EUGENE COSEY,

Petitioner,

vs.

STATE OF NEBRASKA, and CLAY
COUNTY,

Respondents.

4:18CV3062

**MEMORANDUM
AND ORDER**

This matter is before the court on initial review of Petitioner Eugene Cosey's Petition for Writ of Habeas Corpus. ([Filing No. 1](#).) Petitioner recently filed another habeas petition in 4:18CV3078 which I dismissed without prejudice on June 1, 2018. (*See* [Filing No. 6](#), Case No. 4:18CV3078.) I take judicial notice of the records in that case. As in 4:18CV3078, Petitioner here challenges a pending criminal prosecution albeit in the Clay County District Court of Nebraska. After initial review under [Rule 4](#) of the *Rules Governing Section 2254 Cases in the United States District Courts*, I will dismiss the § 2254 petition without prejudice.

Petitioner admits that he has not yet been convicted or sentenced but attacks the pending prosecution apparently because he claims he is not the person identified as the defendant and he is being deprived of his liberty due to an improper police investigation. He does not challenge any pretrial custody decision. Accordingly, this action is premature and must be dismissed without prejudice. *See, e.g., Hall v. United States*, No. 09-CV-4095, 2010 WL 143683, at *3 (W.D. Ark. Jan. 8, 2010) ("[T]his Court lacks jurisdiction to address those issues in the context of a habeas corpus proceeding prior to a sentence being imposed, and the appropriate proceeding for all of the issues raised in this Petition is the pending criminal proceeding."), *aff'd*, 365 F. App'x 39 (8th Cir. 2010).

A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [28 U.S.C. § 2253\(c\)\(2\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, [529 U.S. 473, 484–85 \(2000\)](#). I have applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The petition for a writ of habeas corpus under § 2254 ([filing no. 1](#)) is dismissed without prejudice.
2. No certificate of appealability has been or will be issued.
3. A separate judgment will be issued.

Dated this 5th day of June, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge